

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 15

MAILED

UNITED STATES PATENT AND TRADEMARK OFFICE

APR 30 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL WERNER DIETRICH, NORBERT EISEN
and GERHARD HEILIG

Appeal No. 2000-1824
Application No. 09/077,914

ON BRIEF

Before KIMLIN, WALTZ and DELMENDO, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 11-15 and 18-23, all the claims remaining in the present application. Claims 11 and 19 are illustrative:

11. A process for the production of a rigid polyurethane foamed plastic comprising reacting

a) from about 5 to about 80 parts by weight of an aromatic amine initiated polyol,

Appeal No. 2000-1824
Application No. 09/077,914

- b) a polyisocyanate,
- c) a blowing agent comprising
 - 1) from about 5 to about 50 parts by weight of a C₃ and/or C₄ alkane

and

- 2) from about 50 to about 95 parts by weight of cyclopentane, and optionally

- d) auxiliary additives.

19. A blowing agent composition comprising

- a) from about 5 to about 50 parts by weight of a C₃ and/or C₄ alkane and
- b) from about 50 to about 95 parts by weight of cyclopentane.

In the rejection of the appealed claims, the examiner relies upon the following reference:

De Vos et al. (De Vos) 5,444,101 Aug. 22, 1995

Claims 11-15, 18 and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over De Vos. Claims 19, 20, 22 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by De Vos.

Appellants submit at page 3 of the principal brief that none of the claims rejected under § 103 or § 102 "will be argued separately." Accordingly, claims 12-15, 18 and 21 stand or fall

together with claim 11, and claims 20, 22 and 23 stand or fall together with claim 19.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are convinced that the examiner's rejections are free of reversible error. Accordingly, we will sustain the examiner's rejections.

We consider first the examiner's rejection under § 103. Appellants do not dispute the examiner's factual determination that De Vos discloses a process for producing rigid polyurethane foamed plastic comprising reacting an aromatic amine initiated polyol with a polyisocyanate in the presence of a blowing agent comprising a C₃ and/or C₄ alkane and cyclopentane in the recited amounts. Accordingly, based upon these uncontested findings by the examiner, and the fact that such findings are found in our review of De Vos, we have no doubt that the examiner has established a prima facie case of obviousness for the rejected claims.

Appellants maintain that De Vos prefers isopentane, n-pentane and HFC-134a as co-blowing agents, and such "are clearly not a C₃ or C₄ alkane" (page 4 of principal brief, second paragraph). However, De Vos expressly teaches that especially preferred classes of blowing agents are alkanes (column 2,

line 44), and examples of suitable blowing agents are n-butane, cyclobutane, isobutane, propane and cyclopropane, all of which are clearly C₃ or C₄ alkanes. As a result, we are satisfied that one of ordinary skill in the art would have found it obvious to employ the presently claimed blowing agents in the production of a rigid polyurethane foamed plastic. Appellants' argument that "[n]ot one of those six C₃ or C₄ alkanes is used in an example or otherwise identified as being more advantageous than any of the other sixty-two named co-blowing agents" (page 4 of principal brief) is more appropriate for a rejection under § 102, not § 103. Also, we observe that appellants base no argument upon objective evidence of nonobviousness which serves to rebut the inference of obviousness.

As for the examiner's § 102 rejection, we find that the description in De Vos of six compounds that are C₃ or C₄ blowing agents is a sufficient description of the claimed co-blowing agent within the meaning of § 102. Although De Vos does not provide a working example of a C₃ or C₄ blowing agent, we find that De Vos's description of six C₃ or C₄ blowing agents in a list of twenty-three blowing agents does not require the verboten "picking and choosing" that militates against a rejection under

Appeal No. 2000-1824
Application No. 09/077,914

§ 102 (see De Vos at column 2, lines 46-54). See In re Schaumann, 572 F.2d 312, 197 USPQ 5 (CCPA 1978)

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Edward C. Kimlin

EDWARD C. KIMLIN)
Administrative Patent Judge)
)

Thomas A. Waltz

THOMAS A. WALTZ)
Administrative Patent Judge)
)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Romulo H. Delmendo

ROMULO H. DELMENDO)
Administrative Patent Judge)
)

ECK:clm

Appeal No. 2000-1824
Application No. 09/077,914

Patent Dept.
Bayer Corp.
100 Bayer Road
Pittsburgh, PA 15205-9741